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HONOURABLE SRI JUSTICE B.PRAKASH RAO
AND
HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:12219 of 2000

DATED: 19-10-2006

Between:

1. The Secretary, DOT, Ministry of Communications (rep.by Union of India), 20, Ashoka Road, Sanchar Bhavan, New Delhi and 3 others.

.....
PETITIONERS

AND

C.Muni Swamy

.....RESPONDENT

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ORDER:(per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order of the Central Administrative Tribunal, in O.A.No.535 of 1998 dated 01-10-1999, the respondents in the OA have filed the present writ petition.

Facts in brief are that the respondent-applicant was

appointed as a casual mazdoor, with effect from 21-02-1987, under the Sub-Divisional Officer, Phones, Tirupati during the period between 21-02-1987 and 31-05-1992. He is said to have put in a total service of 566 days. Thereafter his services were terminated on 01-10-1989 by the Sub-Divisional Officer, Telecom, Chittoor, without any notice on the ground that the Telecom Department had banned recruitment of fresh casual mazdoors with effect from 30-03-1985. The respondent-applicant contended that he was not paid one month's wages as required under Section 25F of the Industrial Disputes Act, 1947 or in accordance with the proceedings of the Director General, Posts & Telegraphs, New Delhi, dated 01-10-1984. According to the respondent his retrenchment, with effect from 01-10-1989, is illegal and void and he was entitled to be reinstated with continuity of service. The respondent-applicant further contended that he was re-engaged as a casual mazdoor by the Sub-Divisional Officer, Telecom, Piler, for a total period of 121 days between 01-02-1992 to 31-05-1992, that his name was reflected in the muster roll, but he was again retrenched from service. The respondent-applicant requested that he be taken back. He was engaged on contract basis to perform Watchman duties during the period 13-09-1994 to 02-02-1995 and continued to do so when he filed the OA on 20-03-1998. According to the respondent-applicant though he worked for a period of 276 days from 03-02-1995 to 21-03-1996 under the petitioner herein

and was thereafter employed on contract basis, his services were continued without even weekly offs.

The Tribunal held that mazdoors engaged on contract basis could not be deprived of the benefits available to casual mazdoors directly engaged by the department unless the department succeeds in making out a case that the work entrusted to the concerned mazdoor was not of a perennial nature and/or the work for which the mazdoor was engaged formed part of a project which was temporary in nature and that the work on that project had come to an end. Holding that the petitioners herein had not made any effort to render the aforesaid satisfaction to its satisfaction and that, under the guise of the term "contract labour" the respondent-applicant could not be deprived of the benefit of a casual mazdoor directly employed by the department, the Tribunal held that the respondent-applicant was entitled to be granted temporary status to be followed by regularization in accordance with law and in case he had been removed from service during the pendency of the OA he should be reinstated forthwith without any delay and thereafter temporary status as directed above should be conferred upon him.

The Tribunal relied on the judgment in **Shri Ram Prasad Rai v. Union of India**[1] of the Gowhati Bench of the Central

Administrative Tribunal which in turn had relied on the judgment of the Apex Court in **Air India Statutory Corporation v. United Labour Union and others**[2]. The Tribunal also relied on the judgment of the Apex Court in **Secretary, H.S.E.B. v. Suresh and others**[3].

It is necessary to note that the judgment of the Apex Court in **Air India Statutory Corporation**[2] has been subsequently over ruled by the Constitution Bench of the Supreme Court in **Steel Authority of India Ltd. v. National Union Water Front Workers**[4]. In view of the law laid down by the Constitution Bench of the Apex Court that contract labour are not entitled to be automatically treated as employees of the principal employer, reliance placed by the Tribunal on the earlier judgment in **Air India Statutory Corporation**[2], which has since been overruled, is of no avail. Even otherwise, it was not open to the Tribunal to issue a mandamus that the respondent-applicant be granted temporary status to be followed by regularization of his services. The Apex Court in **Secretary, State of Karnakata v. Umadevi**[5] has held that no such relief could be granted. The order of the Tribunal, in the impugned OA, is therefore set aside.

Sri T.Balaji, learned counsel for the respondent-applicant,

would submit that despite the orders of the Tribunal, while the petitioner was not granted the benefit of temporary status followed by regularisation, several other employees, junior to him in service, were conferred such a benefit.

We note, from the application filed in the O.A., that no such plea has been taken. Learned counsel would submit that these are all subsequent events which took place during the pendency of the present writ petition. If that be so, we make it clear that the order now passed will not preclude the respondent-applicant from availing such remedies as are available to him in law.

Subject to the above observations, the writ petition is allowed. The order of the Tribunal is quashed. However, in the circumstances, without costs.

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B.PRAKASH RAO, J

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RAMESH RANGANATHAN, J

19th October, 2006

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[1] AIR 1997 SC 645

[2] AIR 1997 SC 645

[3] 1999 (2) SCALE 315

[4] AIR 2001 SC 3527

[5] 2006 (4) SCC 1